



## **Subject - Proposed Rulemaking, FAR Part 23.704 - use of ecolabels in federal purchasing of electronics**

May 16, 2023

### **Summary**

TCO Development is the organization behind TCO Certified, the global, independent sustainability certification for IT products.

We are writing regarding a recommended modification to FAR Part 23.704, which addresses environmentally preferable purchasing of electronics for federal agencies. Currently, the FAR requires that federal agencies use a single, private sector label - EPEAT - when specifying computers and other electronics, with no alternative ecolabels permitted, despite the existence of other proven, rigorous ecolabels that specifically address the electronics category.

Our submission requests that the FAR Council amend the current FAR Part 23.704 to correct this current lack of free and fair competition and allow eligibility for equivalent ecolabels in federal purchasing. In this case, electronics should be addressed consistently with other product categories, where multiple ecolabels are permitted and recommended on the EPA list of recommended ecolabels, as part of the Sustainable Marketplace.

For TCO Development, the current requirement in the FAR has also negatively impacted our ability to access federal procurement in the United States, while TCO Certified is widely used - and frequently preferred - in many other countries. We welcome this opportunity to urge action on correcting this inconsistency and market access barriers embedded in the current FAR language, and look forward to supporting free and fair competition in the US Government Sustainable Marketplace.

### **About TCO Certified**

TCO Certified is a global, independent certification for IT products. Since 1992, institutional IT purchasers around the world (including non-federal purchasers in the United States) have freely cited TCO Certified as a way to identify more sustainable computers and other electronics typically used in an IT workspace. TCO Certified is especially widely used in public sector procurement around the world.

**TCO Development - Toward Sustainable IT Products**

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TCO Certified comprises two main components:

- a) Criteria - covering environmental and supply chain sustainability, including criteria for climate, circularity (longer product life, replaceable components, e-waste reduction etc), hazardous substances and social responsibility in manufacturing.
- b) Independent verification - mandatory product testing and verification of supply chain / factory compliance.

Currently there are over 3000 product models from more than 20 global brands that are certified to meet all the requirements in TCO Certified and around 100 million unique products are manufactured yearly with TCO Certified. A searchable product finder, along with complete program and criteria information, is available at [tcocertified.com](http://tcocertified.com)

### **Current FAR and ecolabel recommendations - restricting free market competition**

Currently, FAR Part 23.704 requires that federal agencies ensure at least 95% of the electronics they purchase meet the requirements of a single, private sector ecolabel - EPEAT. The current rule does not allow for alternative ecolabels or certifications to be used. This is despite the existence of robust ecolabels - particularly TCO Certified - that specialize in the sustainability certification of electronics, and that are proven to equal, if not exceed, the scope, verification and environmental priorities covered by EPEAT and indicated in Executive Order 13693.

Also of note, is that the requirement to purchase EPEAT registered products relies on revoked authority of EO13423 and EO13514. The requirement was not updated in line with EO13693.

### **Inconsistency with other product category recommendations**

In addition, in the Sustainable Marketplace, the EPA has published a list of recommended ecolabels and certifications for federal procurement in a number of product categories. For electronics, the only private sector recommended ecolabel is EPEAT. In other categories, such as office/furniture, custodial, and electronics recycling services, multiple private sector ecolabels are listed as acceptable for federal agency use.

For some product categories, the EPA list is in the process of being updated, and additional ecolabels are under evaluation for inclusion in the list. However, EPA has published that the electronics category is not in focus for this review. The current FAR part 23.704 is cited as a reason for not treating the electronics category in a manner consistent with other categories in the EPA recommendations. This inconsistency has been noted by several expert and industry bodies in the electronics ecosystem.

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### **Negative impact on market access for TCO Certified**

The exclusive requirement of EPEAT use in both the FAR and EPA list of recommended ecolabels, has negatively impacted our ability to gain public sector market traction for TCO Certified in the United States, especially among federal agencies. The continued monopoly of EPEAT in the FAR and EPA guidelines has effectively blocked our ability to be utilized in federal procurement, and by extension, many states and local jurisdictions as well.

In many cases, state and local policies around use of ecolabels and certifications are modeled on the EPA recommendations and FAR approaches.

Free and fair competition among relevant ecolabels is essential for robust sustainability progress. The availability of multiple, acceptable labels and certifications is essential for ensuring that all agencies have access to best practice ecolabels and certifications that support their sustainability goals and align with sustainability best practice.

### **Recommendation - Amend FAR 23.704 to accept multiple ecolabels in federal procurement of electronics**

In order to increase fair market competition among rigorous and reputable ecolabels and certifications that are verified to meet or exceed the requirements of US Government purchasers of electronics, and all brand owners using these, we recommend a modification to section 23 of the FAR as part of the current review.

Such a modification should remove specific requirements for EPEAT, and instead refer to a list of acceptable ecolabels for electronics procurement. Such a list should be included in the EPA Recommended Ecolabels and Certifications in the Sustainable Marketplace. As part of our recommendations, we also request that EPA support the ability of additional, category specific ecolabels, including TCO Certified, to be eligible for the Sustainable Marketplace, in line with other product category approaches.

Further, to emphasize our recommendations, we support the detailed petition and related communications from the Information Technology Industry Council - ITI - in 2021 and 2022, that recommend specific FAR amendments around widening ecolabel participation for electronics. As further, fact-based rationale for these recommendations, we refer also to the validated side by side comparison of TCO Certified and EPEAT, as provided by ITI.

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### **Aligning US Government with best practices and sustainability leadership**

Finally, IT products are largely a global product category. Global brands typically design computers and other devices with the intent of making those models available in many parts of the world.

Because of their complexity and global supply chain, aligning sustainability factors with a rapidly evolving regulatory landscape globally is essential. Expanding federal agency access to multiple, robust ecolabels will also ensure that the US Government is better aligned with international best practices and sustainability leadership. In addition, wider access to additional ecolabels for US Government purchasers also raises consideration for US Government priorities among those ecolabels as they continuously update and evolve their criteria and verification systems.

It is essential to consider amending FAR Part 23.704 to allow for alternative ecolabels and certifications that meet the environmental standards set forth in EO13693. This would promote fair competition, encourage innovation in sustainable electronics, and ensure compliance with federal antitrust and competition laws.

Thank you for your attention to this important matter. We look forward to your response and to supporting a commitment from the United States Government to a more accessible and open marketplace for environmentally certified electronics.

We welcome the opportunity to speak further on this subject or answer any questions at your convenience.

Very Respectfully

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